

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

Docket No. 193,646

ORDER

Claimant requests review of the Preliminary Hearing Order of Administrative Law Judge Nelsonna Potts Barnes entered in this proceeding on October 4, 1995.

ISSUES

The Administrative Law Judge denied claimant's request for workers compensation benefits and found that claimant had failed to prove her knee problems were caused or aggravated by her work. Claimant requested review of that finding. That is the sole issue now before the Appeals Board.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the entire record, for purposes of preliminary hearing the Appeals Board finds:

(1) Because the issue is whether claimant sustained a work-related injury or aggravation to her knees, the Appeals Board has jurisdiction to review this preliminary hearing order under K.S.A. 44-534a.

(2) The Order of the Administrative Law Judge should be affirmed. The Appeals Board agrees with the Administrative Law Judge that claimant has failed to prove her knees were injured or aggravated by her work activities during January 1994 through June 1994, the period of alleged accident. During that period claimant was off work January, February and March to recover from cataract surgery. Also, claimant missed some work during this period due to problems associated with bilateral carpal tunnel syndrome. When claimant returned to work for respondent in April 1994, she worked part time until leaving in June.

Although claimant contends the pain in her knees increased until she could no longer work, the evidence fails to establish that the increased symptoms resulted from a work-related injury rather than the natural progression of degenerative arthritis, which was diagnosed as early as 1992, or from some other cause. Claimant's knees have troubled her since 1989.

In support of her claim, claimant presented various documents, including a letter from Paul D. Lesko, M.D., dated March 20, 1995. In a portion of that letter Dr. Lesko writes:

"The extent that returning to work in April of 1994 through June of 1994 further contributed to her symptoms is the question being asked. I would say that the activity from shortly after January of 1992 until January of 1994 would have aggravated her symptoms more than the activity from April until June of 1994. However, there could be a contribution from the April to June activity further aggravating her symptoms. However, it is obviously not the sole cause with the precipitating incident occurring in January of 1992."

Dr. Lesko's opinion is inexact and fails to convince the Appeals Board that claimant's present knee problems are the result of a work-related injury that occurred during the period alleged. Considering the record as a whole, the Appeals Board finds that claimant has failed to satisfy her burden of proving that she has sustained personal injury by accident arising out of and in the course of her employment with respondent.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Preliminary Hearing Order of Administrative Law Judge Nelsonna Potts Barnes entered in this proceeding on October 4, 1995 should be, and hereby is, affirmed.

IT IS SO ORDERED.

Dated this ____ day of January 1996.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Robert R. Lee, Wichita, KS
Brian J. Fowler, Kansas City, MO
Andrew E. Busch, Wichita, KS
Nelsonna Potts Barnes, Administrative Law Judge
Philip S. Harness, Director